

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

LEONARDO de CARVALHO)	
PEREIRA,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 2:23-cv-5-ECM-JTA
)	(WO)
NIVA COSTA CRUZ GUNTER,)	
)	
Defendant.)	

ORDER

Before the court is Plaintiff Leonardo de Carvalho Pereira's "Urgent" Motion Request to Postpone the Scheduled Hearing for December 4th, 2023, and Request to Appear Remotely. (Doc. No. 34.) In the motion, Pereira requests (1) a continuance of the December 4, 2023 hearing due to a scheduled surgery incident to a motorcycle accident and his alleged unawareness of the order setting the hearing; (2) a continuance of the November 28, 2023 deadline for the parties to file the required joint Rule 26(f) discovery plan; and (3) permission to appear at the continued hearing by videoconference because he cannot travel internationally for thirty days after surgery and because, he contends, international travel to resolve this child custody case will pose a hardship on him.

Upon consideration of the motion (Doc. No. 34) it is ORDERED as follows:

1. **On or before November 29, 2023**, Defendant Niva Costa Cruz Gunter **shall** file a response to Pereira's "Urgent" Motion Request to Postpone the Scheduled Hearing for December 4th, 2023, and Request to Appear

Remotely. (Doc. No. 34). In her response, Gunter shall specifically address (a) Pereira's request to continue the December 4, 2023 hearing due to his motorcycle accident and surgery, and (b) Pereira's request to appear remotely. Due to time constraints, Pereira's motion (Doc. No. 34) will be under submission as of the filing of Gunter's response. Thus, no reply will be allowed Pereira, and, if he files one, it will be stricken and not considered by the court.

2. **On or before December 1, 2023**, the parties shall confer **by telephone or videoconference** and shall develop a proposed discovery plan and other information as required for filing the report of the parties' planning meeting pursuant to Rule 26(f) of the Federal Rules of Civil Procedure. The **joint** Rule 26(f) report containing the discovery plan shall be filed as soon as practicable, but not later than **December 1, 2023**. This deadline extension is not due to Pereira's motion and shall not be construed as granting that motion in part. Rather, the extension is necessary because of the delay Pereira caused by failing to deal in good faith with Gunter's counsel to complete the report,¹

¹ Pereira's failure to act in good faith is evidenced by the email exchange between him and Gunter's counsel. (Doc. No. 32-1; Doc. No. 34-1.) That email exchange demonstrates (1) an initial failure to respond to Gunter's counsel's November 7, 2023 request to work jointly to comply with the October 27, 2023 Order to jointly complete the Rule 26(f) report; (2) a November 13, 2023 response by Pereira (to a November 13, 2023 follow-up email from Gunter's counsel again requesting a response and cooperation in complying with the court's order) in which Pereira stated that he "ha[d]n't received [the October 27, 2023 Order] yet" and that he was "going to wait until [he was] officially notified about this decision by the Court before we set up anything;" (3) the fact that, on November 14, 2023, Gunter's counsel sent Pereira a copy of the October 27, 2023 Order, yet Pereira still did not cooperate, and, (4) at no time since November 7, 2023 did he attempt

which renders it simply impossible at this point for the parties to jointly submit the report by the original November 28, 2023 deadline. Based on Pereira's filing, the court is confident that, even though Pereira is recuperating from surgery, he can communicate with Gunter's counsel sufficiently to timely complete the report by December 1, 2023. This case must move forward.

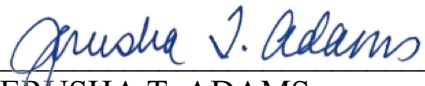
3. The Clerk of the Court shall serve Plaintiff with a copy of this Order in accordance with the usual procedures. In addition, in light of upcoming deadlines, on this one occasion,² the Clerk of the Court shall email Plaintiff a copy of this Order. Plaintiff is ADVISED that he is **not permitted to reply** to the Clerk's email with an email or to otherwise attempt inappropriately to communicate with the Office of the Clerk of the Court by email. **If Plaintiff attempts to communicate with the Office of the Clerk of the Court in a manner that violates this or previous orders, the Clerk of the Court shall immediately notify the undersigned of the infraction. Upon Plaintiff's receipt** from the Clerk of the email containing a copy of this Order, Plaintiff shall **immediately file, in writing, notice of receipt of the same. Again, filings by email are not accepted.**

to cooperate with opposing counsel or to bring any issue before the court regarding any delay in service of the October 27, 2023 Order. (Doc. No. 32-1; *see also* Docs. No. 34, 34-1.)

² Future orders shall **not** be served by email, unless otherwise specifically ordered.

Failure to comply with this Order or any other Order of this court may result in sanctions, including monetary sanctions or dismissal of this case with or without prejudice.

DONE this 27th day of November, 2023.



JERUSHA T. ADAMS
UNITED STATES MAGISTRATE JUDGE